



DEPARTMENT OF THE NAVY
COMMANDER, NAVY INSTALLATIONS COMMAND
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17 Aug 2005

From: Commander, Navy Installations Command, Millington Detachment

Subj: USE OF 10 USC 2492 MEMORANDUM OF AGREEMENTS FOR MORALE,
WELFARE, AND RECREATION (MWR) ACTIVITIES

Ref: (a) 10 USC 2492
(b) USECDEF memo of 29 Dec 2004
(c) DOD 7000.14-R, Volume 13, Financial Management Regulation
(d) RAMCAS User Handbook, revised Oct 04
(e) DODI 1015.14
(f) 10 USC 2494

Encl: (1) Sample MOA for services
(2) Sample MOA for contracting authority

1. Reference (a) (formerly 10 USC 2482a) permits nonappropriated fund instrumentalities (NAFIs) to enter into contracts or other agreements with other elements of the Department of Defense to provide and obtain goods and services beneficial to the efficient management and operation of the MWR program.

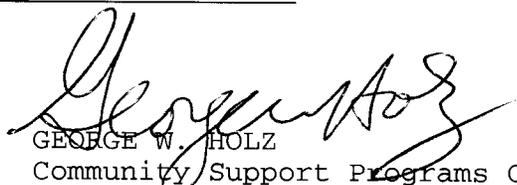
2. Reference (b) is the only available Department of Defense guidance on the use of this statute. The Department of the Navy has not issued specific guidance concerning references (a) and (b). Therefore, we are issuing the following MWR guidance for use by regions under the Commander, Navy Installations Command.

3. Reference (b) states:

"Contracts or other agreements established between NAFIs and DoD elements pursuant to 10 U.S.C. 2492, shall be limited to NAFIs directly supporting Armed Services Exchange, Military MWR, and Lodging programs. NAFIs may enter into contracts or other agreements to provide those goods or services specifically authorized for exchanges pursuant to DoD Instruction 1330.21, *Armed Services Exchange Regulations (ASER)*; military MWR activities as defined in DoD Instruction 1015.10, *Programs for Military Morale, Welfare, and Recreation (MWR)*, civilian MWR activities as defined in DoD 1015.8-R, *DoD Civilian Employee Morale, Welfare and Recreation Activities and Supporting Nonappropriated Fund Instrumentalities Regulation*, and lodging activities as defined in DoD Directive 1015.11, *Lodging Resource Policy*. Under this authority, DoD NAFIs may also provide services inherent to their internal operation. DoD NAFIs shall not enter into contracts or agreements with DoD elements or other Federal Departments, Agencies or Instrumentalities for the provision of goods and services that will result in the loss of jobs created pursuant to the RSA [Randolph-Sheppard Act, 20 U.S.C. 107-107f], JWOD [Javits-Wagner-O'Day Act, 41 U.S.C. 46-48(c)], or small business programs."

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4. Reference (b) also requires the NAFI custodian to ensure the agreement or contract financially benefits the NAFI, considering all costs (including depreciation).
5. The proper accounting for transactions related to the use of 10 USC 2492 agreements should be in accordance with references (c) and (d). When a CNI activity enters into an agreement under reference (a), all costs associated with such agreement shall be delineated when the agreement is for services that will be billed by the hour. These expenses will include the cost of labor, all benefits, a charge for tort liability coverage, overhead, travel and lodging expenses, and all supplies that will be utilized in fulfilling the agreement. The benefit cost for NAFI employees is 26% of labor, the cost of overhead is 11%, and the tort liability cost is 5% of the total cost to provide the goods or services agreed upon in the agreement.
6. Items may also be priced by the completed project. For example, delivery of a poster produced by MWR may be charged by item produced. If MWR is already producing posters and has a standard charge, then the MOA should reflect the established charge.
7. If the agreement is for supplies that are not manufactured by the NAFI the true cost of the supplies includes the procurement expenses and the cost of the NAFI employee(s) who processed the procurement action. Therefore, the NAFI procuring supplies shall establish a markup sufficient to cover all costs associated with the labor to obtain the item(s). This charge shall account for all costs as established in paragraph 5 above.
8. Enclosures (1) and (2) are sample MOAs for services and contracting services. These samples may be modified to reflect local requirements and include all relevant information. They are to be used to identify the business relationship between the parties and should be used only when this approach is beneficial to the NAFI. A legal review is required for all MOAs made under the authority of 10 USC 2492.
9. This memorandum does not apply to any agreements entered into under references (e) and (f) concerning the Utilization, Support and Accountability (USA) or Uniform Funding and Management (UFM) processes.
10. Should you have any questions, please contact me at 901-874-6626 or DSN 882-6626 or by email at george.holz@navy.mil.


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